APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 95-7544

CARIE MARIE MARTIN,

Appellant

v.

ROBERT P. CASEY, Governor; DOUGLAS K. TOBIN,

Director, Bureau of Driver Licensing, Dept. Of

Transportation

On Appeal from the United States District court For the

Middle District of Pennsylvania

(D.C. Civil Action No. 94-Cv-00928)

District Judge: Honorable Sylvia H. Rambo, Chief Judge

Submitted Under Third Circuit LAR 34.1 (a)

July 26, 1996

BEFORE: BECKER, STAPLETON, AND MICHEL, *

Circuit Judges

* Hon. Paul R. Michel, United States Circuit Judge for the Federal Circuit, sitting by designation.

JUDGMENT ORDER

After consideration of the contentions raised by appellant, it is

ORDERED AND ADJUDGED that the judgment of the district court entered September 7, 1995, be and the same is hereby affirmed.

Costs taxed against appellant.

By the Court,

s/_____
Circuit Judge

ATTEST:

s/_____
Chief Deputy Clerk

DATED: AUG - 2 1996

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

CARIE MARIE MARTIN,
Plaintiff

JUDGMENT IN A CIVIL CASE

v.

DOUGLAS K. TOBIN,
Defendant

CASE NUMBER: 1:CV-94-0928
J. Rambo

• Jury verdict. This action came before the court for a trial by jury, The issues have been tried and the jury has rendered its verdict.

• Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED
that summary judgment be and is hereby entered in favor of the defendant, Douglas K. Tobin, and against plaintiff, Carie Marie Martin.

FILED
HARRISBURG, PA
SEP 6 1995

MARY E. D'ANDREA, CLERK
Per s/_____
Deputy Clerk

September 6, 1995 Mary E. D'Andrea
Date Clerk

s/_____
(By) Deputy Clerk George T. Gardner

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CARIE MARIE MARTIN, : CIVIL NO. 1: CV-94-0928:
:
Plaintiff, :
:
v. :
:
Douglas K. Tobin, :
:
Defendant :

FILED
HARRISBURG, PA
SEP 6 1995

MARY E. D'ANDREA, CLERK
Per s/_____
Deputy Clerk

MEMORANDUM

Before the court is Defendant's motion for summary judgment filed on June 16, 1995. A brief in opposition to the motion was filed by plaintiff on July 5, 1995. On July 12, 1995, Defendant notified the court that a reply brief would not be filed. As such, the motion for summary judgment is ripe for disposition.

I. Background

It is undisputed that Plaintiff Carie Marie Martin, a resident of the Commonwealth of Pennsylvania, has been unable to obtain a Pennsylvania driver's license because she does not have a social security number. Plaintiff doesnot believe in the Social Security system and intends

never to collect Social Security benefits, therefore, plaintiff has refused to obtain a Social Security number. •

Further, it is undisputed that § 1510 of the Pennsylvania Motor Vehicles code is at the crux of the instant dispute. 75 Pa. Cons. Stat. Ann. § 1510)Purdon's Supp. 1994). In relevant part, § 1510 provides as follows:

(a) The department shall . . . issue to every qualified applicant a driver's license . . . . Except as provided in subsection (f), an applicant shall include his Social Security number on his license application . . . .

(f) . . . the department shall issue a driver's license to an otherwise eligible person who has no Social Security number if the person submits a waiver obtained from the Federal Government permitting him not to have a Social Security number. The department may require other identifiers, including, but not limited to, a taxpayer identification number, before issuing a license.

75 Pa. Cons. Stat. Ann. § 1510 (a) & (f). The Commonwealth uses social security numbers to identify drivers within their own records, and when receiving information from or sending information to the National Driver Registry and the Commercial Driver License Information System. •

Plaintiff contends that § 1510 is unconstitutional as applied to her because it "has caused the Plaintiff to be deprived of the right to operate a motor vehicle purportedly under Pennsylvania state law, this being a violation of the Plaintiff's civil rights in violation of Title 42 united StatesCode § 1983." (Compl. at ¶ 16.) Further, Plaintiff

contends that enforcement of § 1510 has deprived her of her fifth and fourteenth Amendment rights to equal protection of the law. (Compl. At § 21 (B)).)

Thus, the issue before the court on this motion for summary judgment, is whether § 1510 is unconstitutional as it applies to plaintiff.

II. Legal Standards: Motion for Summary Judgment

When considering a motion for summary judgment, this court is bound by Rule 56 of the Federal Rules of Civil Procedure. In Hankins v. Temple Univ., 829 F.2d 437, 440 (3rd Cir. 1987), the United States Court of Appeals for the Third Circuit discussed the applicable standards for summary judgment:

> Summary judgment may be entered if "the pleadings, deposition(s), answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56 (c). An issue is "genuine" only if the evidence is such that a reasonable jury could return a verdict for the non moving party, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, [248,] 106 S.Ct. 2505, 2510, 91 L.Ed. 2d 202 (1986); Equimark Comm. Finance Co. v. C.I.T. Financial Serv. Corp., 812 F.2d 141, 144 (cd Cir. 1987). If the evidence is "merely colorable" or "not significantly probative" summary judgment may be granted. Anderson, 106 S. Ct. At 2511; Equimark, 812 F.2d at 144. Where the record, taken as a whole, could not "lead a rational trier of fact to find for the nonmoving party, summary judgment is proper"." Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 106 S.Ct. 1348, 1356, 89 L.Ed. 2d 538 (1986).

Id. Once the moving party has shown an absence of evidence to support the claims of the nonmoving party, the nonmoving party must do more than simply sit back and rest on the allegations of the complaint. Specifically, the nonmoving party must "go beyond the pleadings and her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file' and designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). If the nonmovant bears the burden of persuasion at trial, "the party moving for summary judgment may meet its burden by showing that the evidentiary materials of record, if reduced to admissible evidence, would be insufficient to carry the nonmovant's burden at trial." Chipollini v. Spencer Gifts, Inc., 814 F.2d 893, 896 (3d Cir. 1987), cert. Dismissed, 483 U.S. 1052 (1987).

III. Discussion

The central issues before the court are as follows: (1) whether § 1510 unconstitutionally denies Plaintiff her Fifth and Fourteenth Amendment rights to equal protection of the laws, (2) whether application of the statute violates 42 U.S.C. §§ 1983, 1985, and 1986, and (3) whether Plaintifrf is entitled to an award of attorney's fees pursuant to 42 U.S.C. § 1986. The court will address these issues seriatim.

A. Equal Protection Claim

Before proceeding with its analysis of Plaintiff's equal protection claim, the court will briefly review the components of a properly pleaded equal protection claim. Stated in the most rudimentary fashion, an equal protection challenge arises when laws are applied in such a way as to discriminate against a given class of persons or as to

deprive persons of a fundamental right. The standards employed by a court to evaluate the constitutionality of the challenged action are driven by the classification of the persons alleging the discrimination or of the right being deprived. For example, certain classifications have been found to warrant strict scrutiny review by the court, such as those based upon race, alienage, or national origin. See Graham v. Richardson, 403 U.S. 365, 372 (1971); Korematsu v. United States, 323 U.S. 214, 216 (1944). Strict scrutiny review is also warranted where the challenged action deprives a person of a fundamental right, such as the right to travel. See Dunn v. Blumstein, 405 U.S. 330 (1972). Those classifications and rights not falling within the narrowly defined group warranting strict or intermediate level scrutiny, are evaluated under a rational basis standard. See FCC v. Beach Communications, Inc., ____ U.S. ____ 113 S.Ct. 2096 (1993).

In light of the above-mentioned framework, a plaintiff alleging an equal protection claim must identify the class within which she is a member or the right of which she has been deprived. Plaintiff in the captioned action seems to claim that she has been deprived of her fundamental right to travel because her application for a driver's license has been denied. (See Compl. at ¶ 21A.) Plaintiff has confused the fundamental right to travel with the non-fundamental right to obtain a driver's license. See Sheakley v. Dept. Of Transportation, 513 A.2d 551, 553 (Pa. Commw. Ct. 1986), appeal denied, 527 A.2d 546 (Pa. 1987) (finding operation of motor vehicle on the highways to be a privilege rather than a fundamental right). The court does not agree that Plaintiff has been deprived of her right to travel; rather, she has merely been deprived of the right to personally drive a car as her means of transportation. Because the right at issue is not a fundamental right, the

court will review the constitutionality of a 1510 under the rational basis standard.

"Under rational-basis review, the challenged classification must be upheld 'if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.'" Donatelli v. Mitchell, 2 F. 3d 508, 513 (3d Cir. 1993) (quoting Beach Communications, 113 S.Ct. at 2101). This standard of review requires the court to accord great deference to the decisions made by the statelegislature in enacting the law at issue in the equal protection claim. See Beach Communications, 113 S.Ct. at 2101 (rational basis review is not a license for courts to judge the wisdom, fairness, or logic of legislative choices.") Moreover, "(t)he state decision-makers need not actually articulate the purpose or rationale supporting the classification; nor does the state have any obligation to produce evidence to sustain the rationality of its decision." Donatelli, 2 F.3 at 515 (citing Heller v. Doe, ____ U.S. ____, 113 S.Ct. 2637, 2642 (1993)).

Plaintiff contends that § 1510 infringes upon her right to equal protection of the laws insofar as the statute precludes her from obtaining a Pennsylvania driver's license because she does not have a social security number. The Commonwealth argues that the identifying number is necessary to accomplish a number of health, safety, and welfare related goals. Specifically, Defendant avers as follows:

having a social security number for each licensee assists the Department in verifying the identity of persons so that its records accurately reflect the safety record of Pennsylvania drivers. Those records, in turn, are used to determine whether a license should be issued, revoked or suspended. (Def. Brief in Support at 7.) Defendant also points to the

National Driver Register law, 49 U.S.C.S. § 30301 to § 30308, as further evidence of the propriety of requesting that applicants provide a social security number on their applications. Pursuant to § 30304, states participating in the Registry must, inter alia, report to the registry information regarding persons who are denied licenses, whose licenses are revoked, and who are convicted for motor vehicle offenses. 49 U.S.C.S. § 30304 (a). As part of their filing, states must include "the social security account number if used by the State for driver record or motor vehicle license purposes, and the motor vehicle operator's license number if different from the social security account number. " 49 U.S.C.S. § 30304 (b) (1) (C).

Although it was not required to do so, the Commonwealth has provided the court with ample evidence that a rational basis exists for requesting that applicants for driver's licenses supply the commonwealth with their social security number. accordingly, Plaintiff's equal protection claim must fail. The court will grant Defendant's motion for summary judgment as to Plaintiff's equal protection claim.

B. Civil Rights Claims

In addition to the equal protection claim, Plaintiff has alleged causes of action pursuant to 42 U.S.C. §§ 1983, 1985, 1986, and requested attorney's fees pursuant to § 1988. Plaintiff's civil rights claims are based upon her equal protection Claim. The court has already found that Plaintiff has failed to state a valid equal protection claim. Moreover, the court can find no other alleged rights violation upon which a civil rights claim could be based. • Accordingly, insofar as the civil rights claims must be founded upon an alleged equal protection violation, the

court finds the claims to be without merit. Further, a party is not entitled to attorney's fees unless they are the prevailing party in a civil rights action. Plaintiff cannot prevail on any of her civil rights claims, thus, she is not entitled to an award of attorney's fees pursuant to § 1988. defendant's motion for summary judgment will be granted as to Plaintiff's civil rights claims and request for attorney's fees. [4]

IV. Conclusion

As the court finds Plaintiff's claims to be without merit, and further, finds there to be no disputed material facts, the court will grant Defendant's motion for summary judgment in its entirety. An appropriate order will be issued.

s/

SYLVIA H. RAMBO, Chief Judge
Middle District of Pennsylvania

Dated: September 5, 1995

Footnotes:

1. Plaintiff contends that evidence regarding Plaintiff's reasons for not obtaining a Social Security number is "immaterial and irrelevant and . . . [has] absolutely nothing to do with the issue introduced as evidence to this court. " PP. Brief in Op. at 2.) the court cannot agree. Plaintiff's refusal to obtain a social Security number is central to the instant dispute. If Plaintiff provided the Department of transportation with such a number, she would not have encountered difficulty in obtaining her driver's permit. Further, this evidence is admissible with respect to the

motion for summary judgment. Plaintiff's answers to Defendant's interrogatories contain a list of reasons why she intends not to obtain a social Security number. answers to interrogatories are admissible evidence at summary judgment. See United States v. O'Connell, 890 F. 2d 563, 567 (1st Cir. 1989).-

2. Both the National Driver Registry and the Commercial Driver License Information System are national directories used to improve highway safety by keeping unsafe drivers off of the road.

3. The court has already found that Plaintiff was not deprived of her fundamental right to travel.

4. As the court has found no merit in any of Plaintiff's claims, Plaintiff's request for compensatory and punitive amages is moot. (See Compl. at ¶¶ 21 (a) and 21 (b).)